



INDEPENDENT AUDITOR'S REPORT

Clay County Sheriff's Office Body-Worn Camera Program



MARCH 20, 2023
RAMPART DEFENSE LLC
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Audit Overview and Recommendations

Dear Clay County Board and Sheriff Empting:

We have audited the body-worn camera (BWC) program of the Clay County Sheriff's Office (CCSO) for the period of 11/24/2020 – 11/23/2022. Minnesota Statute §13.825 mandates that any law enforcement agency operating a portable recording system (PRS)¹ program obtain an independent, biennial audit of its program. This program and its associated data are the responsibility of the Clay County Sheriff's Office. Our responsibility is to express an opinion on the operations of this program based on our audit.

On December 5, 2022, Rampart Defense LLC (Rampart) met with Lt. Josh Schroder, who provided information about CCSO's BWC program policies, procedures and operations. As part of the audit, Rampart reviewed those policies, procedures and operations for compliance with Minnesota Statute §626.8473, which sets forth the requirements for creating and implementing a BWC program, and Minnesota Statute §13.825, which governs the operation of BWC programs. In addition, Rampart also conducted a sampling of BWC data to verify CCSO's recordkeeping.

The purpose of this report is to provide an overview of this audit, and to provide recommendations to improve the CCSO BWC program and enhance compliance with statutory requirements.

CCSO BWC Program Implementation and Authorization

Effective August 1, 2016, Minnesota Statute §626.8473 Subd. 2 requires that:

A local law enforcement agency must provide an opportunity for public comment before it purchases or implements a portable recording system. At a minimum, the agency must accept public comments submitted electronically or by mail, and the governing body with jurisdiction over the budget of the law enforcement agency must provide an opportunity for public comment at a regularly-scheduled meeting.

In addition, §626.8473 Subd. 3(a) requires that the law enforcement agency establish and enforce a written policy governing the use of its portable recording system, and states "[t]he written policy must be posted on the agency's Web site, if the agency has a Web site."

Lt. Schroder provided documentation showing that the public notification, comment and meeting requirements had been satisfied prior to the implementation of CCSO's BWC program on November 24, 2020. Specifically, Lt. Schroder furnished the following:

¹ It should be noted that Minnesota statute uses the broader term "portable recording system" (PRS), which includes body-worn cameras. Because body-worn cameras are the only type of portable recording system employed by CCSO, these terms may be used interchangeably in this report.

- A copy of a press release dated August 6, 2020, announcing CCSO's plan to implement a BWC program and inviting the public to provide comment electronically, by mail or in person at the September 22, 2020, meeting of the Clay County Board.
- A copy of the minutes of the September 22, 2020, Clay County Board meeting, which included a section titled "Public Hearing – Input on Body Worn Cameras for Sheriff's Office." The meeting minutes noted multiple comments from members the public, all of which were in favor of adopting body-worn cameras. After further discussion, the board members voted unanimously to approve the program. Copies of these documents have been retained in Rampart's audit files.

Rampart staff were unable to locate a working link to the Clay County Sheriff's Office's written BWC policy on their webpage at the time of our audit. Lt. Schroder advised our auditor that CCSO previously did have such a link in place, but it had been removed prior to the audit. As discussed above, such a link is required when an agency has a website, as CCSO does.

Prior to the completion of this report, Rampart verified that CCSO had added a working link to their current BWC policy to their website.

In our opinion, CCSO is compliant with this requirement as of the date of this report.

CCSO BWC WRITTEN POLICY

As part of this audit, we reviewed CCSO's BWC policy, a copy of which is attached to this report as Appendix A.

Minnesota Statute §626.8473 Subd. 3(b) requires a written BWC policy to incorporate the following, at a minimum:

1. The requirements of section 13.825 and other data classifications, access procedures, retention policies, and data safeguards that, at a minimum, meet the requirements of chapter 13 and other applicable law;
2. Procedures for testing the portable recording system to ensure adequate functioning;
3. Procedures to address a system malfunction or failure, including requirements for documentation by the officer using the system at the time of a malfunction or failure;
4. Circumstances where recording is mandatory, prohibited, or at the discretion of the officer using the system;
5. Circumstances under which a data subject must be given notice of a recording;
6. Circumstances under which a recording may be ended while an investigation, response, or incident is ongoing;
7. Procedures for the secure storage of portable recording system data and the creation of backup copies of the data; and
8. Procedures to ensure compliance and address violations of the policy, which must include, at a minimum, supervisory or internal audits and reviews, and the employee discipline standards for unauthorized access to data contained in section 13.09.

Due to their complexity and interrelatedness, clauses 1 and 7 are discussed separately below. Clause 8 is also discussed separately.

In our opinion, the CCSO BWC policy is compliant with respect to clauses 2 – 6.

CCSO BWC Data Retention

Section 422.10 of CCSO’s BWC policy states that “[a]ll recordings shall be retained for a period consistent with the requirements of the organization[’s records retention schedule but in no event for a period of less than 180 days.”

Lt Schroder advised us that CCSO does not have a separate records retention schedule specific to BWC data. He noted that CCSO uses a BWC policy developed by Lexipol, and that the reference to a records retention schedule appears to be part of their standard language.

While the 180-day retention period exceeds the 90-day minimum retention period required for “not active or inactive investigatory data” in §13.825 Subd. 3(a), Subd. 3(b) specifies a minimum retention period of one year for data documenting certain firearms discharges, use of force by a peace officer that results in substantial bodily harm or an incident that results in a formal complaint against a peace officer.

The policy also states that “[i]f an individual captured in a recording submits a written request, the recording *may* [italics added] be retained for an additional time period.” §13.825 Subd. 3(c) states that upon receipt of a written request, such data *shall* [italics added] be retained for an additional time period of up to 180 days.

Though not specified in the written policy, Lt. Schroder advised us during the audit that test recordings are only retained for 30 days. When advised on the 90-day statutory requirement, Lt. Schroder immediately adjusted the retention period to 90 days for these recordings. Our auditor verified this change.

CCSO employs WatchGuard Vista body-worn cameras and uses automated settings in Watchguard’s Evidence Library video management system running on an on-site server to manage BWC data retention. The retention period for each video is determined by the data classification assigned at the completion of the recording; however, this retention period can be adjusted as needed.

A deputy’s Watchguard body-worn camera and squad camera are linked; consequently, activating one camera automatically activates the other. BWC and squad camera uploads to CCSO’s server are automated and self-initiate as soon as a camera is within range of the antennas at the sheriff’s office.

Deputies assign the appropriate label or labels to each file to identify the nature of the data at the time they cease recording. These labels then determine the appropriate retention period for each file.

Prior to completion of this report, Lt. Schroder furnished a revised BWC policy that includes the following changes:

- Reduces the 180-day minimum retention period to 90-day period specified in statute to allow for more timely deletion of test recordings, accidental activations and other non-investigatory data not otherwise requiring a longer retention period;
- Retains a 180-day minimum retention period for videos with any evidentiary value;
- Removes the reference to a separate retention schedule;

- Adds language addressing the categories identified in §13.825 Subd. 3(b) and specifies a minimum retention period of one year for qualifying firearms discharges and a minimum retention period of six years for the other categories;
- Amends the policy language to make additional retention mandatory upon receipt of a written request from a data subject, and specifies a retention period of 180 days.

A copy of the revised BWC policy is attached to this report as Appendix B.

In our opinion, CCSO's revised written BWC policy is compliant with respect to applicable data retention requirements.

CCSO BWC Data Destruction

Lt. Schroder advised us that CCSO BWC data are stored on a server located on-site.

Data on the existing server are destroyed through automated deletion and overwriting, based on a retention schedule assigned to each video. In addition, at the time it is retired from service, any CCSO-owned physical hard drive used to store BWC data will have all data deleted prior to being destroyed by physical means, specifically shredding.

We strongly recommend that CCSO explore options for creating a backup copy of its BWC data to guard against catastrophic loss due to a hardware failure or physical hazard such as a flood, fire or wind event. In our experience, other similarly situated agencies have employed an automated backup process utilizing a second secure server at a separate county-owned facility, such as the highway department, to mitigate these risks.

In our opinion, CCSO's written BWC policy is compliant with respect to the applicable data destruction requirements.

CCSO BWC Data Access

Any request for access to BWC data by data subjects would be made in writing to the CCSO Records Department using a specified data request form. The records supervisor is then responsible for reviewing and fulfilling each request in accordance with the provisions of §13.825 Subd. 4(b).

CCSO BWC data is shared with other law enforcement agencies for evidentiary purposes only. All such requests are made by email and reviewed by Lt. Schroder. Existing verbal agreements between CCSO and other area law enforcement agencies address data classification, destruction and security requirements, as specified in §13.825 Subd. 8(b). At the time of the audit, CCSO was evaluating the addition of a written acknowledgment of these requirements from requesting agencies. Access to CCSO BWC data for outside agencies is primarily provided via an expiring email link; however, physical media including USB drives and DVDs may be used as needed.

We recommend that CCSO obtain a written acknowledgement from any outside law enforcement agency that any BWC data obtained from CCSO will be managed by the requesting agency in compliance

with the requirements of §13.825 Subd. 7 and 8. A copy of this written acknowledgment should be maintained on file.

In our opinion, CCSO's written BWC policy is compliant with respect to the applicable data access requirements.

CCSO BWC Data Classification

CCSO's written BWC policy notes that "[e]xcept as provided by Minn. Stat. §13.825, Subd. 2, audio/video recordings are considered private or nonpublic data."

In our opinion, this section of the policy is compliant with respect to the applicable data classification requirements.

CCSO BWC Internal Compliance Verification

The Review of Recorded Media Files section of the CCSO BWC policy authorizes supervisors to "review relevant recordings any time they are investigating alleged misconduct or reports or meritorious conduct or whenever such recordings would be beneficial in reviewing the member's performance," but does not mandate such reviews. Lt. Schroder advised us that administrators do conduct reviews, but that aside from monitoring the performance of new deputies after completing FTO, reviews are normally incident-dependent.

Minnesota Statute §626.8473 Subd. 3(b)(8) requires that a written BWC policy contain "procedures to ensure compliance and address violations of the policy, which must include, at a minimum, supervisory or internal audits or reviews..."

Prior to the completion of this report, CCSO furnished a revised BWC policy specifying that "[t]he Lieutenant of the Operations Division shall conduct random reviews of BWC on a monthly basis to verify the policy herein is being complied with."

The Accountability section of CCSO's BWC policy states that "[a]ny member who accesses or releases recordings without authorization may be subject to discipline."

In our opinion, these sections of the revised BWC policy are substantially compliant with the applicable internal compliance and disciplinary requirements contained in §626.8473 Subd. 3(b)(8).

CCSO BWC Program and Inventory

CCSO currently possesses 24 Watchguard Vista body-worn cameras.

The CCSO BWC policy identifies those circumstances in which deputies are expected to activate their body-worn cameras, as well as circumstances in which they are prohibited from activating their body-worn cameras. The policy also provides guidance for those circumstances in which BWC activation is deemed discretionary.

The CCSO BWC policy states that “[d]eputies shall make sure their BWC is working properly at the beginning of each shift.” Lt. Schroder advised that this is accomplished through the creation of a test recording. We recommend specifically including test recordings in the supervisory reviews discussed in the previous section as verification that BWCs are being tested at the start of each shift as required by policy.

While CCSO does not maintain a separate log of BWC deployment or use, Lt. Schroder advised us that because each uniformed deputy wears a BWC while on duty, the number of BWC units deployed with uniformed personnel each shift can be determined based on a review of CCSO payroll records. In addition, non-uniformed personnel are issued and authorized but not required to wear or use body-worn cameras. Actual BWC use would be determined based on the creation of BWC data.

§422.7 of the CCSO BWC Policy states that “[m]embers are prohibited from using personally owned recording devices while on-duty without the express consent of the Shift Sergeant.” Minn. Stat. §13.825 Subd. 6, however, states that: “[w]hile on duty, a peace officer may only use a portable recording system issued and maintained by the officer’s agency in documenting the officer’s activities.”

Lt. Schroder advised us that the language allowing a sergeant to authorize the use of a personally-owned device as a BWC was intended to permit the substitution of a cell phone camera in the event of a BWC failure under exigent circumstances; however, the cell phones to be substituted are owned and maintained by CCSO and no use of personally-owned devices would be authorized.

Prior to completion of this report, CCSO furnished a revised copy of the BWC policy that removes the language allowing supervisors to authorize the use of personally-owned recording devices.

As of the date of the audit, CCSO maintained 16,594 “event items” and 11,466.6 GB of Watchguard A/V data. Lt. Schroder advised us that these totals include both BWC and squad videos, and that Watchguard is currently unable to provide individual summaries.

Rampart is aware of this limitation of the Watchguard BWC system when used in conjunction with their squad-based cameras and has previously established that while laborious, it is possible for an agency to determine the amount of retained BWC video through a manual review and therefore meet the statutory requirement to provide such information as public data if requested.

In our opinion, CCSO’s revised written BWC policy is compliant with respect to requirements addressed in this section, including the requirement that personnel employ only agency-owned BWC devices, as of the date of this report.

CCSO BWC Physical, Technological and Procedural Safeguards

CCSO BWC data are initially recorded to an internal hard drive in each deputy’s BWC. Those files are then transferred via wireless upload to a dedicated server at the CCSO office through an antenna system at the sheriff’s office. The server is secured behind multiple locked doors.

Deputies have view-only access to their own data for report writing, trial preparation, data administration, investigatory purposes and other legitimate law enforcement purposes.

As noted above, requests by other law enforcement agencies for CCSO BWC data must be approved by Lt. Schroder and are fulfilled primarily via expiring email link, though physical media may also be used as necessary. A similar method is employed to submit CCSO BWC data to the Clay County Attorney's Office.

Enhanced Surveillance Technology

CCSO currently employs BWCs with only standard audio/video recording capabilities. They have no plans at this time to add enhanced BWC surveillance capabilities, such as thermal or night vision, or to otherwise expand the type or scope of their BWC technology.

If CCSO should obtain such enhanced technology in the future, Minnesota Statute §13.825 Subd. 10 requires notice to the Minnesota Bureau of Criminal Apprehension within 10 days. This notice must include a description of the technology and its surveillance capability and intended uses.

Data Sampling

Rampart selected a random sample of 132 calls for service from which to review any available BWC recordings. It should be noted that not every call will result in a deputy activating his or her BWC. For example, a deputy who responds to a driving complaint but is unable to locate the suspect vehicle would be unlikely to activate his or her BWC. It should also be noted that because the audit covers a period of two years, while most BWC data is only required to be retained for 90 days, there is a significant likelihood that the sample population will include ICRs for which BWC data was created, but which has since been deleted due to the expiration of the retention period. The auditor reviewed the retained BWC videos to verify that this data was accurately documented in CCSO records.

Audit Conclusions

In our opinion, the Clay County Sheriff's Office's Body-Worn Camera Program is substantially compliant with Minnesota Statutes §13.825 and §626.8473 as of the date of this report.



Daniel E. Gazelka

Rampart Defense LLC

3/20/2023

Appendix A:

Policy 422 Clay County Sheriff's Office Clay Cnty SO Policy Manual Copyright Lexipol, LLC 2022/09/07, All Rights Reserved. Published with permission by Clay County Sheriff's Office Portable Audio/Video Recorders - 1 Portable Audio/Video Recorders 422.1 PURPOSE AND SCOPE This policy provides guidelines for the use of portable audio/video recording devices by members of this office while in the performance of their duties (Minn. Stat. § 626.8473). Portable audio/ video recording devices include all recording systems whether body-worn, handheld or integrated into portable equipment. This policy does not apply to mobile audio/video recordings, interviews or interrogations conducted at any Clay County Sheriff's Office facility, undercover operations, wiretaps or eavesdropping (concealed listening devices) unless captured by a portable recording system. 422.1.1 DEFINITIONS Definitions related to this policy include: Portable recording system - A device worn by a member that is capable of both video and audio recording of the member's activities and interactions with others or collecting digital multimedia evidence as part of an investigation and as provided in Minn. Stat. § 13.825. 422.2 POLICY The Clay County Sheriff's Office may provide members with access to portable recorders for use during the performance of their duties. The use of recorders is intended to enhance the mission of the Office by accurately capturing contacts between members of the Office and the public. 422.3 MEMBER PRIVACY EXPECTATION All recordings made by members on any office-issued device at any time or while acting in an official capacity of this office, regardless of ownership of the device, shall remain the property of the Office. Members shall have no expectation of privacy or ownership interest in the content of these recordings. 422.4 MEMBER RESPONSIBILITIES Prior to going into service, each uniformed member will be responsible for making sure that he/she is equipped with a portable recorder issued by the Office, and that the recorder is in good working order (Minn. Stat. § 13.825). If the recorder is not in working order or the member becomes aware of a malfunction at any time, the member shall promptly report the failure to his/her supervisor and obtain a functioning device as soon as reasonably practicable. Uniformed members should wear the recorder in a conspicuous manner or otherwise notify persons that they are being recorded, whenever reasonably practicable (Minn. Stat. § 626.8473). Any member assigned to a non-uniformed position may carry an approved portable recorder at any time the member believes that such a device may be useful. Unless conducting a lawful recording in an authorized undercover capacity, non-uniformed members should wear the recorder in a conspicuous manner when in use or otherwise notify persons that they are being recorded, whenever reasonably practicable. Clay County Sheriff's Office Clay Cnty SO Policy Manual Portable Audio/Video Recorders Copyright Lexipol, LLC 2022/09/07, All Rights Reserved. Published with permission by Clay County Sheriff's Office Portable Audio/Video Recorders - 2 When using a portable recorder, the assigned member shall record his/her name, employee number and the current date and time at the beginning and the end of the shift or other period of use, regardless of whether any activity was recorded. This procedure is not required when the recording device and related software captures the user's unique identification and the date

and time of each recording. Members should document the existence of a recording in any report or other official record of the contact, including any instance where the recorder malfunctioned or the member deactivated the recording (Minn. Stat. § 626.8473). Members should include the reason for deactivation.

422.5 ACTIVATION OF THE AUDIO/VIDEO RECORDER This policy is not intended to describe every possible situation in which the recorder should be used, although there are many situations where its use is appropriate. Members should activate the recorder any time the member believes it would be appropriate or valuable to record an incident. The recorder should be activated in any of the following situations: (a) All enforcement and investigative contacts including stops and field interview (FI) situations (b) Traffic stops including, but not limited to, traffic violations, stranded motorist assistance and all crime interdiction stops (c) Self-initiated activity in which a member would normally notify RRRDC (d) Any other contact that becomes adversarial after the initial contact in a situation that would not otherwise require recording Members should remain sensitive to the dignity of all individuals being recorded and exercise sound discretion to respect privacy by discontinuing recording whenever it reasonably appears to the member that such privacy may outweigh any legitimate law enforcement interest in recording. Requests by members of the public to stop recording should be considered using this same criterion. Recording should resume when privacy is no longer at issue unless the circumstances no longer fit the criteria for recording. At no time is a member expected to jeopardize his/her safety in order to activate a portable recorder or change the recording media. However, the recorder should be activated in situations described above as soon as reasonably practicable.

422.5.1 CESSATION OF RECORDING Once activated, the portable recorder should remain on continuously until the member reasonably believes that his/her direct participation in the incident is complete or the situation no longer fits the criteria for activation. Recording may be stopped during significant periods of inactivity such as report writing or other breaks from direct participation in the incident.

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422.5.2 SURREPTITIOUS RECORDINGS Minnesota law permits an individual to surreptitiously record any conversation in which one party to the conversation has given his/her permission (Minn. Stat. § 626A.02). Members of the Office may surreptitiously record any conversation during the course of a criminal investigation in which the member reasonably believes that such a recording will be lawful and beneficial to the investigation. Members shall not surreptitiously record another office member without a court order unless lawfully authorized by the Sheriff or the authorized designee.

422.5.3 EXPLOSIVE DEVICE Many portable recorders, including body-worn cameras and audio/video transmitters, emit radio waves that could trigger an explosive device. Therefore, these devices should not be used where an explosive device may be present.

422.6 IDENTIFICATION AND PRESERVATION OF RECORDINGS To assist with identifying and preserving data and recordings, members should download, tag or mark the recordings in accordance with procedure and document the existence of the recording in any related case report. A member should transfer, tag or mark recordings when the member reasonably believes: (a) The recording contains evidence relevant to potential criminal, civil or administrative matters. (b) A complainant, victim or witness has requested non-disclosure. (c) A complainant, victim or witness has not requested non-disclosure but the disclosure of the recording may endanger the person. (d) Disclosure may be an unreasonable violation of someone's privacy. (e) Medical or mental health information is contained. (f) Disclosure may compromise an under-cover officer or confidential informant. (g) The recording or portions of the recording may be protected under the Minnesota Data Practices Act. Any time a member reasonably believes a recorded contact may be

beneficial in a non-criminal matter (e.g., a hostile contact), the member should promptly notify a supervisor of the existence of the recording. 422.7 REVIEW OF RECORDED MEDIA FILES When preparing written reports, members should review their recordings as a resource (See the Officer-Involved Shootings and Deaths Policy for guidance in those cases). However, members shall not retain personal copies of recordings. Members should not use the fact that a recording was made as a reason to write a less detailed report. Clay County Sheriff's Office Clay Cnty SO Policy Manual Portable Audio/Video Recorders Copyright Lexipol, LLC 2022/09/07, All Rights Reserved. Published with permission by Clay County Sheriff's Office Portable Audio/Video Recorders - 4 Supervisors are authorized to review relevant recordings any time they are investigating alleged misconduct or reports of meritorious conduct or whenever such recordings would be beneficial in reviewing the member's performance. Recorded files may also be reviewed: (a) Upon approval by a supervisor, by any member of the Office who is participating in an official investigation, such as a personnel complaint, administrative investigation or criminal investigation. (b) Pursuant to lawful process or by court personnel who are otherwise authorized to review evidence in a related case. (c) In compliance with the Minnesota Data Practices Act request, if permitted or required by the Act, including pursuant to Minn. Stat. § 13.82, Subd. 15, and in accordance with the Records Maintenance and Release Policy. All recordings should be reviewed by the Custodian of Records prior to public release (See the Records Maintenance and Release Policy). Recordings that are clearly offensive to common sensibilities should not be publicly released unless disclosure is required by law or order of the court (Minn. Stat. § 13.82, Subd. 7; Minn. Stat. § 13.825, Subd. 2). 422.8 COORDINATOR The Sheriff or the authorized designee should designate a coordinator responsible for (Minn. Stat. § 626.8473; Minn. Stat. § 13.825): (a) Establishing procedures for the security, storage and maintenance of data and recordings. 1. The coordinator should work with the Custodian of Records and the member assigned to coordinate the use, access and release of protected information to ensure that procedures comply with requirements of the Minnesota Government Data Practices Act (MGDPA) and other applicable laws (Minn. Stat. § 13.01 et seq.) (See the Protected Information and the Records Maintenance and Release policies). (b) Establishing procedures for accessing data and recordings. 1. These procedures should include the process to obtain written authorization for access to non-public data by CCSO members and members of other governmental entities and agencies. (c) Establishing procedures for logging or auditing access. (d) Establishing procedures for transferring, downloading, tagging or marking events. (e) Establishing an inventory of portable recorders including: 1. Total number of devices owned or maintained by the Clay County Sheriff's Office. 2. Daily record of the total number deployed and used by members and, if applicable, the precinct or district in which the devices were used. Clay County Sheriff's Office Clay Cnty SO Policy Manual Portable Audio/Video Recorders Copyright Lexipol, LLC 2022/09/07, All Rights Reserved. Published with permission by Clay County Sheriff's Office Portable Audio/Video Recorders - 5 3. Total amount of recorded audio and video data collected by the devices and maintained by the Clay County Sheriff's Office. (f) Preparing the biennial audit required by Minn. Stat. § 13.825, Subd. 9. (g) Notifying the Bureau of Criminal Apprehension (BCA) in a timely manner when new equipment is obtained by the Clay County Sheriff's Office that expands the type or scope of surveillance capabilities of the office's portable recorders. 422.9 PROHIBITED USE OF AUDIO/VIDEO RECORDERS Members are prohibited from using office-issued portable recorders and recording media for personal use and are prohibited from making personal copies of recordings created while on-duty or while acting in their official capacity. Members are also prohibited from retaining recordings of activities or information obtained while on-duty, whether the recording was created with office-issued or personally owned recorders. Members

shall not duplicate or distribute such recordings, except for authorized legitimate office business purposes. All such recordings shall be retained at the Office. Members are prohibited from using personally owned recording devices while on-duty without the express consent of the Shift Supervisor. Any member who uses a personally owned recorder for office-related activities shall comply with the provisions of this policy, including retention and release requirements and should notify the on-duty supervisor of such use as soon as reasonably practicable. Recordings shall not be used by any member for the purpose of embarrassment, harassment or ridicule. 422.10 RETENTION OF RECORDINGS All recordings shall be retained for a period consistent with the requirements of the organization's records retention schedule but in no event for a period less than 180 days. If an individual captured in a recording submits a written request, the recording may be retained for additional time period. The coordinator should be responsible for notifying the individual prior to destruction of the recording (Minn. Stat. § 13.825). 422.10.1 RELEASE OF AUDIO/VIDEO RECORDINGS Requests for the release of audio/video recordings shall be processed in accordance with the Records Maintenance and Release Policy. 422.10.2 ACCESS TO RECORDINGS Except as provided by Minn. Stat. § 13.825, Subd. 2, audio/video recordings are considered private or nonpublic data. Any person captured in a recording may have access to the recording. If the individual requests a copy of the recording and does not have the consent of other non-law enforcement individuals captured on the recording, the identity of those individuals must be blurred or obscured sufficiently Clay County Sheriff's Office Clay Cnty SO Policy Manual Portable Audio/Video Recorders Copyright Lexipol, LLC 2022/09/07, All Rights Reserved. Published with permission by Clay County Sheriff's Office Portable Audio/Video Recorders - 6 to render the subject unidentifiable prior to release. The identity of on-duty peace officers may not be obscured unless their identity is protected under Minn. Stat. § 13.82, Subd. 17. 422.11 ACCOUNTABILITY Any member who accesses or releases recordings without authorization may be subject to discipline (See the Standards of Conduct and the Protected Information policies) (Minn. Stat. § 626.8473).

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any office-issued device at any time or while acting in an official capacity of this office, regardless of ownership of the device, shall remain the property of the Office. Members shall have no expectation of privacy or ownership interest in the content of these recordings.

422.4 MEMBER RESPONSIBILITIES Prior to going into service, each uniformed member will be responsible for making sure that he/she is equipped with a portable recorder issued by the Office, and that the recorder is in good working order (Minn. Stat. § 13.825). If the recorder is not in working order or the member becomes aware of a malfunction at any time, the member shall promptly report the failure to his/her supervisor and obtain a functioning device as soon as reasonably practicable. Uniformed members should wear the recorder in a conspicuous manner or otherwise notify persons that they are being recorded, whenever reasonably practicable (Minn. Stat. § 626.8473). Any member assigned to a non-uniformed position may carry an approved portable recorder at any time the member believes that such a device may be useful. Unless conducting a lawful recording in an authorized undercover capacity, non-uniformed members should wear the recorder in a conspicuous manner when in use or otherwise notify persons that they are being recorded, whenever reasonably practicable. Clay County Sheriff's Office Clay Cnty SO Policy Manual Portable Audio/Video Recorders Copyright Lexipol, LLC 2023/03/13, All Rights Reserved. Published with permission by Clay County Sheriff's Office Portable Audio/Video Recorders - 2

When using a portable recorder, the assigned member shall record his/her name, employee number and the current date and time at the beginning and the end of the shift or other period of use, regardless of whether any activity was recorded. This procedure is not required when the recording device and related software captures the user's unique identification and the date and time of each recording. Members should document the existence of a recording in any report or other official record of the contact, including any instance where the recorder malfunctioned or the member deactivated the recording (Minn. Stat. § 626.8473). Members should include the reason for deactivation.

422.5 ACTIVATION OF THE AUDIO/VIDEO RECORDER This policy is not intended to describe every possible situation in which the recorder should be used, although there are many situations where its use is appropriate. Members should activate the recorder any time the member believes it would be appropriate or valuable to record an incident. The recorder should be activated in any of the following situations: (a) All enforcement and investigative contacts including stops and field interview (FI) situations (b) Traffic stops including, but not limited to, traffic violations, stranded motorist assistance and all crime interdiction stops (c) Self-initiated activity in which a member would normally notify RRRDC (d) Any other contact that becomes adversarial after the initial contact in a situation that would not otherwise require recording

Members should remain sensitive to the dignity of all individuals being recorded and exercise sound discretion to respect privacy by discontinuing recording whenever it reasonably appears to the member that such privacy may outweigh any legitimate law enforcement interest in recording. Requests by members of the public to stop recording should be considered using this same criterion. Recording should resume when privacy is no longer at issue unless the circumstances no longer fit the criteria for recording. At no time is a member expected to jeopardize his/her safety in order to activate a portable recorder or change the recording media. However, the recorder should be activated in situations described above as soon as reasonably practicable.

422.5.1 CESSATION OF RECORDING Once activated, the portable recorder should remain on continuously until the member reasonably believes that his/her direct participation in the incident is complete or the situation no longer fits the criteria for activation. Recording may be stopped during significant periods of inactivity such as report writing or other breaks from direct participation in the incident. Clay County Sheriff's Office Clay Cnty SO Policy Manual Portable Audio/Video Recorders Copyright Lexipol, LLC 2023/03/13, All Rights Reserved. Published with permission by Clay County

Sheriff's Office Portable Audio/Video Recorders - 3 422.5.2 SURREPTITIOUS RECORDINGS Minnesota law permits an individual to surreptitiously record any conversation in which one party to the conversation has given his/her permission (Minn. Stat. § 626A.02). Members of the Office may surreptitiously record any conversation during the course of a criminal investigation in which the member reasonably believes that such a recording will be lawful and beneficial to the investigation. Members shall not surreptitiously record another office member without a court order unless lawfully authorized by the Sheriff or the authorized designee.

422.5.3 EXPLOSIVE DEVICE Many portable recorders, including body-worn cameras and audio/video transmitters, emit radio waves that could trigger an explosive device. Therefore, these devices should not be used where an explosive device may be present.

422.6 IDENTIFICATION AND PRESERVATION OF RECORDINGS To assist with identifying and preserving data and recordings, members should download, tag or mark the recordings in accordance with procedure and document the existence of the recording in any related case report. A member should transfer, tag or mark recordings when the member reasonably believes:

- (a) The recording contains evidence relevant to potential criminal, civil or administrative matters.
- (b) A complainant, victim or witness has requested non-disclosure.
- (c) A complainant, victim or witness has not requested non-disclosure but the disclosure of the recording may endanger the person.
- (d) Disclosure may be an unreasonable violation of someone's privacy.
- (e) Medical or mental health information is contained.
- (f) Disclosure may compromise an under-cover officer or confidential informant.
- (g) The recording or portions of the recording may be protected under the Minnesota Data Practices Act.

Any time a member reasonably believes a recorded contact may be beneficial in a non-criminal matter (e.g., a hostile contact), the member should promptly notify a supervisor of the existence of the recording.

422.7 REVIEW OF RECORDED MEDIA FILES When preparing written reports, members should review their recordings as a resource (see the Officer-Involved Shootings and Deaths Policy for guidance in those cases). However, members shall not retain personal copies of recordings. Members should not use the fact that a recording was made as a reason to write a less detailed report.

Clay County Sheriff's Office Clay Cnty SO Policy Manual Portable Audio/Video Recorders Copyright Lexipol, LLC 2023/03/13, All Rights Reserved. Published with permission by Clay County Sheriff's Office Portable Audio/Video Recorders - 4 Supervisors are authorized to review relevant recordings any time they are investigating alleged misconduct or reports of meritorious conduct or whenever such recordings would be beneficial in reviewing the member's performance. Recorded files may also be reviewed:

- (a) By a supervisor as part of internal audits and reviews as required by Minn. Stat. § 626.8473.
- (b) Upon approval by a supervisor, by any member of the Office who is participating in an official investigation, such as a personnel complaint, administrative investigation, or criminal investigation.
- (c) Pursuant to lawful process or by court personnel who are otherwise authorized to review evidence in a related case.
- (d) By media personnel with permission of the Sheriff or the authorized designee.
- (e) In compliance with the Minnesota Data Practices Act request, if permitted or required by the Act, including pursuant to Minn. Stat. § 13.82, Subd. 15, and in accordance with the Records Maintenance and Release Policy. All recordings should be reviewed by the Custodian of Records prior to public release (see the Records Maintenance and Release Policy). Recordings that are clearly offensive to common sensibilities should not be publicly released unless disclosure is required by law or order of the court (Minn. Stat. § 13.82, Subd. 7; Minn. Stat. § 13.825, Subd. 2). The Lieutenant of the Operations Division shall conduct random reviews of BWC on a monthly basis to verify the policy herein is being complied with.

422.8 COORDINATOR The Sheriff or the authorized designee should designate a coordinator responsible for (Minn. Stat. § 626.8473; Minn. Stat. § 13.825):

- (a) Establishing procedures for the security, storage, and maintenance of data and recordings.

1. The coordinator should work with

the Custodian of Records and the member assigned to coordinate the use, access, and release of protected information to ensure that procedures comply with requirements of the Minnesota Government Data Practices Act (MGDPA) and other applicable laws (Minn. Stat. § 13.01 et seq.) (see the Protected Information and the Records Maintenance and Release policies). 2. The coordinator should work with the Custodian of Records to identify recordings that must be retained for a specific time frame under Minnesota law (e.g., firearm discharges, certain use of force incidents, formal complaints).

(b) Establishing procedures for accessing data and recordings. 1. These procedures should include the process to obtain written authorization for access to non-public data by CCSO members and members of other governmental entities and agencies. Clay County Sheriff's Office Clay Cnty SO Policy Manual Portable Audio/Video Recorders Copyright Lexipol, LLC 2023/03/13, All Rights Reserved. Published with permission by Clay County Sheriff's Office Portable Audio/Video Recorders - 5 (c) Establishing procedures for logging or auditing access. (d) Establishing procedures for transferring, downloading, tagging, or marking events. (e) Establishing an inventory of portable recorders including: 1. Total number of devices owned or maintained by the Clay County Sheriff's Office. 2. Daily record of the total number deployed and used by members and, if applicable, the precinct or district in which the devices were used. 3. Total amount of recorded audio and video data collected by the devices and maintained by the Clay County Sheriff's Office. (f) Preparing the biennial audit required by Minn. Stat. § 13.825, Subd. 9. (g) Notifying the Bureau of Criminal Apprehension (BCA) in a timely manner when new equipment is obtained by the Clay County Sheriff's Office that expands the type or scope of surveillance capabilities of the office's portable recorders. (h) Ensuring that this Portable Audio/Video Recorders Policy is posted on the Office website.

422.9 PROHIBITED USE OF AUDIO/VIDEO RECORDERS Members are prohibited from using office-issued portable recorders and recording media for personal use and are prohibited from making personal copies of recordings created while on-duty or while acting in their official capacity. Members are also prohibited from retaining recordings of activities or information obtained while on-duty, Members shall not duplicate or distribute such recordings, except for authorized legitimate office business purposes. All such recordings shall be retained at the Office. Recordings shall not be used by any member for the purpose of embarrassment, harassment or ridicule.

422.10 RETENTION OF RECORDINGS All recordings shall be retained for a period consistent with the requirements of the organization's records retention schedule but in no event for a period less than 90 days. If an individual captured in a recording submits a written request, the recording shall be retained for an additional 180 days.. The coordinator should be responsible for notifying the individual prior to destruction of the recording (Minn. Stat. § 13.825). The following data would be retained for the following retention periods. (a) BWC data with any evidentiary value will be retained for a minimum of 180 days. Clay County Sheriff's Office Clay Cnty SO Policy Manual Portable Audio/Video Recorders Copyright Lexipol, LLC 2023/03/13, All Rights Reserved. Published with permission by Clay County Sheriff's Office Portable Audio/Video Recorders - 6 (b) Data documenting the discharge of a firearm by a peace officer in the course of duty, other than for training, killing of an animal that is sick, injured, or dangerous, must be maintained for a minimum period of one year. (c) Certain kinds of BWC data must be retained for six years: 1. Data that documents the use of deadly force by a peace officer, or force of a sufficient type or degree to require a use of force report or supervisory review. 2. Data documenting circumstances that have given rise to a formal complaint against a deputy. The Clay County Sheriff's Office BWC data retention schedule is located on the Clay County Sheriff's Office website.

422.10.1 RELEASE OF AUDIO/VIDEO RECORDINGS Requests for the release of audio/video recordings shall be processed in accordance with the Records Maintenance and Release Policy. 422.10.2 ACCESS TO

RECORDINGS Except as provided by Minn. Stat. § 13.825, Subd. 2, audio/video recordings are considered private or nonpublic data. Any person captured in a recording may have access to the recording. If the individual requests a copy of the recording and does not have the consent of other non-law enforcement individuals captured on the recording, the identity of those individuals must be blurred or obscured sufficiently to render the subject unidentifiable prior to release. The identity of on-duty peace officers may not be obscured unless their identity is protected under Minn. Stat. § 13.82, Subd. 17. 422.11 ACCOUNTABILITY Any member who accesses or releases recordings without authorization may be subject to discipline (see the Standards of Conduct and the Protected Information policies) (Minn. Stat. § 626.8473).